

# **EXHIBIT 1**

**Excerpted Transcript Pages  
from February 1, 2005 Deposition  
of Daniel M. Kohn, taken by Plaintiff**

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF TEXAS  
3 TYLER DIVISION  
4

5 SOVERAIN SOFTWARE, LLC, )

6 Plaintiff, )

7 vs. )

NO. 6:04-CV-14

8 (1) AMAZON.COM, INC. )

04-CV-528

9 (2) THE GAP, INC. )

10 Defendants. )

11 \_\_\_\_\_ )

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14  
15 DEPOSITION OF DANIEL M. KOHN

16 TUESDAY, FEBRUARY 1, 2005

17 PURSUANT TO SUBPOENA BY THE PLAINTIFF  
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22  
23  
24

25 PAGES 1 - 83



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1 Q. And what were your years with NetMarket?

2 What were your dates?

3 A. I conceived of the idea in January of '93,  
4 and we began working full time with the company when  
5 I graduated in June or May '94, and let's see. Sold 09:15:09  
6 the company in December of '94, and then left in  
7 September '95, and moved to Seattle to work for  
8 McCaw.

9 MR. GIANNETTI: Read back the answer,  
10 please. 09:15:32

11 (The record was read.)

12 BY MR. GIANNETTI:

13 Q. All right. What was your degree at  
14 Swarthmore?

15 A. A Bachelor of Arts in -- let's see, it was 09:16:01  
16 an honors major in economics, minors in political  
17 science, computer science, and a concentration in  
18 public policy.

19 Q. Okay. How much computer science did you  
20 do? 09:16:17

21 A. It was my minor, so a good amount.

22 Q. Are you a programmer?

23 A. Yes, but not a good one.

24 Q. What languages are you proficient in?

25 A. That's a good question. I'd say Pascal 09:16:27

1 documents that I was able to find.

2 Q. Okay. All right. Now, since you  
3 discussed NetMarket, or mentioned it, let's ask you  
4 some questions about that.

5 First of all, what was NetMarket? 09:22:33

6 A. It was an Internet shopping service that I  
7 founded 12 years ago.

8 Q. How did you get started with that project?

9 A. I was at the semester abroad at the London  
10 School of Economics, and was using the Internet in 09:23:04  
11 order to connect back to the computers at Swarthmore  
12 College, and at that time, that was a very  
13 challenging thing to do, to set it up and get it  
14 working reliably, and had an idea to start a company  
15 to use the Internet commercially. 09:23:29

16 The initial idea was to start a travel  
17 agency on the Internet. I then convinced Roger Lee  
18 to become my partner and co-founder in starting the  
19 company. We put together the first business plan,  
20 and then, over the succeeding months, convinced Eiji 09:23:47  
21 Hirai, and then Guy Haskin, to join us as additional  
22 partners in the company.

23 Q. When were you at the London School of  
24 Economics?

25 A. January to -- that spring semester of '93. 09:24:02

1 Q. And he was a technical person, with  
2 programming capabilities?

3 A. Yes. He was a senior at Swarthmore, and a  
4 computer science major.

5 Q. Okay. When did you actually begin work on 09:29:40  
6 NetMarket, programming work?

7 A. So I believe it would have been fall of  
8 '93, if not summer of '93.

9 Q. And was that programming work done by  
10 Mr. Haskin and Mr. Hirai? 09:30:00

11 A. Yes, although I also assisted them. I  
12 would say that I was much more involved in the  
13 overall architecture, and particularly in specifying  
14 what we were going to do, but I also engaged in some  
15 programming. 09:30:16

16 Q. And what was Mr. Haskin's role?

17 A. I mean, we're only four people in the  
18 company, so he and Guy did the majority of the  
19 programming.

20 Q. I'm sorry. When you said Guy, were you 09:30:38  
21 referring to --

22 A. Guy Haskin, yes.

23 Q. So Haskin and Hirai did the majority of  
24 the programming?

25 A. Yes. 09:30:50

1 because they were on the Internet; and NetMarket also  
2 did many or several commercial transactions on the  
3 web prior to this.

4 Q. But they weren't secure?

5 A. Correct. I believe the date that our 09:58:06  
6 system went live was July 2nd, '94. So then there  
7 was -- then, so five weeks later, or so, we added the  
8 security service.

9 Q. Okay, and how do you establish that date?

10 A. Which? 09:58:28

11 Q. July 2nd, 1994.

12 A. From memory.

13 Q. Is there any record, that you're aware of,  
14 of the software that existed in July of 1994, or  
15 August of 1994? 09:58:44

16 A. We sold the software to what's now Cendant  
17 Corporation, and so they would have any record.

18 Q. So you don't have that software?

19 A. I do not.

20 Q. Are you aware of where copies of that 09:59:00  
21 software might be?

22 A. I am not.

23 Q. Have you seen any copies of that software?

24 A. I have not in eleven years.

25 Q. Would you recognize that software if you 09:59:14

1 as being in Perl, that was in a language that you  
2 were proficient in?

3 A. Yes.

4 Q. Okay. I want to turn to another subject.

5 You mentioned a backup tape of e-mails, I believe a 10:47:51  
6 four-millimeter tape; is that correct?

7 A. Yes.

8 Q. Do you recall when you last saw that tape?

9 A. I would think in the '97-'98 time frame.

10 I recall seeing it, having it in Seattle. I don't 10:48:10  
11 believe I've ever seen it since I made the move to  
12 California.

13 Q. And when did you move to California?

14 A. 2000.

15 Q. And just to refresh my memory, when did 10:48:26  
16 you move to Seattle?

17 A. In '95.

18 Q. Did you change computers while you were in  
19 Seattle?

20 A. Yes. I've changed computers about six or 10:48:35  
21 seven times since then, I believe, since leaving  
22 NetMarket.

23 Q. Just to be clear, you say you recall  
24 seeing the tape in Seattle, or the documents that  
25 were on the tape? 10:48:47

1 Q. Just to be clear, you are aware that there  
2 was a tape with e-mails that may be responsive to the  
3 subpoena, but you no longer have that tape; is that  
4 correct?

5 A. Correct. I provided all documents that I 10:57:28  
6 was able to get access to, and all computer files  
7 that I was able to get access to.

8 Q. Thank you. That's all I have on cross.  
9

10 REDIRECT EXAMINATION 10:57:39

11 BY MR. GIANNETTI:

12 Q. Just a couple of questions. Did you write  
13 any portion of the original software for NetMarket?

14 A. I did. But I'd say that my contributions  
15 were largely edits or changes to the content that Guy 10:57:48  
16 and Eiji were writing. In particular, I believe they  
17 were writing much more of the core back-end  
18 functionality, and my contributions would have been  
19 much more the facade of layouts, HTML, essentially  
20 lower tech. 10:58:11

21 Q. Do you think you would recognize that  
22 original software?

23 A. Again, I might, but I'm not certain.

24 Q. If one wanted to know how that software  
25 worked, would Mr. Hirai or Mr. Haskin be the persons 10:58:23